

ISAAC MUTE ET AL

IBLA 71-177

Decided May 22, 1972

Separate appeals from the Anchorage Office, Bureau of Land Management, relating to native allotment applications under the Act of May 17, 1906, 43 U.S.C. §§ 270-1, 270-2, 270-3 (1970).

Remanded

Alaska: Native Allotments

Where native allotment applications were pending and on appeal on December 18, 1971, the cases will be remanded to permit the applicants the opportunity of availing themselves of the option selection afforded by section 18(a) of the Alaska Native Claims Settlement Act, P. L. 92-203.

APPEARANCES: Alaska Legal Services Corporation; Commissioner, BIA; Superintendent, Anchorage Agency; BIA, State of Alaska, Div. of Lands, Dept. of Natural Resources; Cole, Hartig, Rhodes & Norman, Attorneys for Kodiak Island Borough; Alfred F. Wright; Paul J. Gregory; William K. Sheldon, Edward F. Norton, pro se.

OPINION BY MR. FRISHBERG

The parties listed in the appendix filed separate appeals from the rejection (in whole or in part) or additional requirements imposed by the Anchorage office of the Bureau of Land Management relating to their individual Native Allotment applications.

The Alaska Native Claims Settlement Act of December 18, 1971, P.L. 92-203, provides as follows:

Sec. 18(a) No Native covered by the provisions of this Act, and no descendant of his, may hereafter avail himself of an allotment under the provisions of the Act of February 8, 1887 (24 Stat. 389), as amended

and supplemented, or the Act of June 25, 1910 (36 Stat. 363). Further, the Act of May 17, 1906 (34 Stat. 197), as amended, is hereby repealed.

Notwithstanding the foregoing provisions of this section, any application for an allotment that is pending before the Department of the Interior on the date of enactment of this Act may, at the option of the Native applicant, be approved and a patent issued in accordance with said 1887, 1910, or 1906 Act, as the case maybe, in which event the Native shall not be eligible for a patent under subsection 14(h)(5) of this Act.

(b) Any allotments approved pursuant to this section during the four years following enactment of this Act shall be charged against the two million acre grant provided for in subsection 14(h). (Emphasis added)

Section 14(h) of the Act provides:

* * * * *

(5) The Secretary may convey to a Native, upon application within two years from the date of enactment of this Act, the surface estate in not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971. Determination of occupancy shall be made by the Secretary, whose decision shall be final. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporations * * *.

The exercise of the section 18 option or re-evaluation of the pending applications may moot the questions posed in the appeals, e.g., whether the applicant is entitled to the full acreage applied for or whether the land applied for is available for disposition. Only if the applicant seeks land which he alleges to have settled, but which was subsequently patented, and does not exercise the option afforded him, will it be necessary for the Bureau to determine whether a recommendation to cancel the previously issued patent should be made. See Everett E. Tibbetts, 61 I.D. 397 (1954). Only were it to be determined that patents may issue in the cases at bar, would it be necessary to determine whether mineral reservations must be impressed in accordance with 43 U.S.C. §§ 270-11, 270-12 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, (211 DM 13.5; 35 F.R. 12081) the case records are remanded to the Bureau of Land Management for appropriate processing.

Newton Frishberg, Chairman

We concur:

Martin Ritvo, Member

Frederick Fishman, Member

APPENDIX A

IBLA 71-177 Isaac Mute	F 031869
71-187 Alfred F. Wright	F 1042
71-192 Joseph H. Katchatag, Sr.	F 030177
71-214 Wassilie Berlin	F 13084
71-225 Herman Hermann	AA 5881
71-238 John B. Nielson	A 063810
71-259 Annie L. Hotch	AA 6135
71-276 Helena M. Schwiete	AA 5887
71-301 Arthur C. Nelson	AA 5876
72-146 Paul J. Gregory	F 13555
72-153 Charles Fred Groat	A 059291
72-186 Mary Evon	F 13968
72-196 Martha D. Taylor	A 597A
State of Alaska; Department of Natural Resources, Protestant Kodiak Island Borough, Protestant	6493
72-200 Mary Jane Schuerch	F 13871
72-203 Carl Tuzroyluke	F 13950
72-316 Stanley J. Huhndorf	A 6625
72-355 Edward F. Naughton	AA 6449

